Franciscan Medical Group v. Premera Blue Cross

119 Wash.App. 1032 (2003) | Cited 0 times | Court of Appeals of Washington | November 25, 2003

Concurring: Christine Jan Quinn-Brintnall, David H Armstrong

UNPUBLISHED OPINION

Premera Blue Cross and PremeraFirst, Inc. (collectively, 'Premera') appeal the trial court's denial of their motion to compel arbitration of plaintiff health care providers' (Providers) earned and billed services claims for which Premera allegedly paid inadequate amounts. Premera argues that Providers' court action is precluded because (1) the parties have written contracts requiring mandatory arbitration; and (2) Providers cannot show that these contractual arbitration agreements are invalid.

We affirm and reverse in part. We affirm the trial court's denial of Premera's motion to compel arbitration of (1) claims by Providers who were never parties to a mandatory arbitration agreement with Premera, and (2) any claims arising under contracts lacking mandatory arbitration clauses. We deny Premera's request to stay the class action proceedings as to these parties and claims.

Holding that other claims, however, may be subject to mandatory arbitration, we reverse, in part, and remand for a hearing or trial to determine whether the parties intended their new contracts to control claims that arose during the effective dates of the former contracts containing mandatory arbitration provisions.

FACTS

I. Background

Premera is a licensed health insurance carrier. Premera contracts with doctors, surgeons, and other health care providers to provide medical service to Premera's insureds. Providers include 72 doctors with the Franciscan Group, seven doctors with the Tacoma Orthopaedic Surgeons, and seven other individual orthopedic physicians.

Premera pays Providers a set fee for each medical service rendered. Each medical procedure is assigned a 'CPT' code according to 'Current Procedural Terminology' published by the American Medical Association.

According to Providers, since March 22, 1996, Premera has used computer billing software that

systematically delays or denies payment of legitimate claims. Providers describe these tactics as 'bundling' (collapsing billing codes for multiple services and paying for only one service) and 'downcoding' (substituting a cheaper billing code for the one a Provider bills).[1] Although the individual payments that Premera delayed or denied to Providers were relatively small,[2] the collective amounts were significant.

A. Former Contracts

Some, but not all, Providers had earlier contracts with Premera that required arbitration of claim disputes. The seven Tacoma Orthopaedic Surgeons doctors and Dr. James Wyman, M.D., however, never had such contracts with Premera.

1. Franciscan Group

In 1996, the Franciscan Group's predecessor in interest[3] entered into a contract with Premera that established an internal dispute-resolution process and appeal by binding arbitration:

5.01 Medical Advisory Panel.

In the event of any medical care related disagreement between {Premera and Franciscan Group}, which cannot be resolved by good faith efforts of the parties, either party may request the {Premera} Medical Director to refer the issue to the Medical Advisory Panel for its review and determination.

5.02 Administrative Appeals Panel.

In the event of any disagreement not related to health care, such as administrative disputes, contractual interpretations, or {Franciscan Group} organizational issues between {Premera} and {Franciscan Group}, which cannot be resolved by good faith efforts of the parties, either party may request that the issue be referred to the Administrative Appeals Panel for its review and determination.

5.03 Arbitration/Appeal.

Either party is entitled to appeal a determination made under either Section 5.01 or 5.02 by giving the other party at least fourteen (14) days prior written notice of its intention to submit the matter to arbitration under the Commercial Arbitration Rules of the American Arbitration Association (AAA). Once submitted, such arbitration proceedings shall be administered by the AAA and the dispute heard by three (3) arbitrators unless a lesser number is agreed upon by the parties. The decision of the arbitrators shall be final and binding upon both parties. However, if both parties agree, arbitration may be waived and the parties could commence action in Superior Court. This Agreement shall be specifically enforceable against the parties hereto. This provision shall survive termination

of this Agreement.

Clerk's Papers (CP) at 56-57 (emphasis added).

2. Six Individual Doctors

Drs. Richard Gray, John Jiganti, Douglas Hassan, Peter Krumins, Arthur Ozolin, and John Stewart entered into contracts with Premera in which the parties agreed:

To resolve any differences regarding payment, utilization management, and medical necessity (but not credentialing) as follows:

1. The Provider and {Premera} will communicate directly in an effort to mutually resolve the dispute.

2. If the Provider and {Premera} cannot mutually resolve the dispute, the dispute will be referred to a {Premera} regional Medical Advisory Committee.

3. If the Provider and {Premera} still cannot resolve the dispute, the dispute will be settled by arbitration using arbitrators with experience in health care and health care insurance issues, before the American Arbitration Association in accordance with its rules and regulations. The arbitrators' decision is final and binding upon the parties.

4. . . . The results of the arbitration will be binding on both parties and neither party may subsequently commence an action to litigate the dispute.

CP at 63, 70, 76, 82, 89, 89G (emphasis added).

B. Change in the Law

Promulgated in November 1999, WAC 284-43-322[4] (1) lists requirements for 'fair' dispute-resolution in medical-care-provider contracts; and (2) outlaws insurance carrier requirements that medical providers submit to binding arbitration, in lieu of judicial remedy, to solve contractual disputes. The rule provides:

Except as otherwise required by a specific federal or state statute or regulation governing dispute resolution, no process for the resolution of disputes arising out of a participating provider or facility contract shall be considered fair under RCW 48.43.055 unless the process meets all the provisions of this section.

(1) A dispute resolution process may include an initial informal process but must include a formal process for resolution of all contract disputes.

(2) A carrier may have different types of dispute resolution processes as necessary for specialized concerns such as provider credentialing or as otherwise required by law. For example, disputes over health plan coverage of health care services are subject to the grievance procedures established for covered persons.

(3) Carriers must allow not less than thirty days after the action giving rise to a dispute for providers and facilities to complain and initiate the dispute resolution process.

(4) Carriers may not require alternative dispute resolution to the exclusion of judicial remedies; however, carriers may require alternative dispute resolution prior to judicial remedies.

(5) Carriers must render a decision on provider or facility complaints within a reasonable time for the type of dispute. In the case of billing disputes, the carrier must render a decision within sixty days of the complaint.

WAC 284-43-322. All provider contracts were required to conform to the new regulations by January 1, 2001. WAC 284-43-331.

C. New Contracts

In 2000, in response to this change in the law, the Franciscan Group and Premera entered into a new contract that did not require binding arbitration of claim disputes. The new contract provided an internal dispute-resolution process that could, but need not, culminate in 'non-binding mediation.'

Similarly, between 1999 and 2001, the individual doctors entered into new contracts with Premera. These contracts required only 'non-binding mediation.'

Additionally, the new contracts provided, in pertinent part:

7.05 Entire Agreement. This Agreement, including all exhibits, addenda, attachments and amendments, constitutes the entire agreement between Intermediary and/or {Premera} and the Participant {Provider}. No implied covenants will be read into this Agreement. This Agreement supersedes all prior agreements between the parties.

CP at 392, 494, 528, 561, 629 (emphasis added). It is these new contracts under which the parties continue to submit and to pay provider fees.

II. Litigation

On March 22, 2002, Providers filed a class action lawsuit against Premera, alleging (1) breach of contract; (2) breach of implied covenant of good faith and fair dealing; (3) quantum meruit; (4)

violation of prompt pay administrative regulations;[5] (5) violation of the Criminal Profiteering Act;[6] (6) violation of the Consumer Protection Act;[7] (7) conspiracy; and (8) intentional interference with contract. Providers requested injunctive and other relief.

Premera denied the substance of Providers' allegations, asserted various defenses and counter-claims, and moved to compel arbitration, citing its contracts with the Franciscan Group and six individual practitioners that required arbitration. Without holding an evidentiary hearing, the trial court denied Premera's motion. The trial court reasoned that express language in the new contracts had 'superseded' the former contracts' mandatory arbitration clauses.

Premera appeals and asks us to stay the entire class action pending mandatory arbitration of claims subject to the former contracts. The primary issue is whether the new contract language 'supercedes' the former contracts' mandatory arbitration provisions.

ANALYSIS

I. Motion To Compel Arbitration

A. Standard of Review

'There is a strong public policy in Washington State favoring arbitration of disputes,' the purpose of which 'is to avoid the formalities, the expense, and the delays of the court system.' Perez v. Mid-Century Ins. Co., 85 Wn. App. 760, 765-66, 934 P.2d 731 (1997). We review questions of arbitrability de novo. Stein v. Geonerco, Inc., 105 Wn. App. 41, 45, 17 P.3d 1266 (2001).

In determining whether a particular dispute is subject to arbitration, we consider 'four guiding principles':

1) the duty to arbitrate arises from the contract; 2) a question of arbitrability is a judicial question unless the parties clearly provide otherwise; 3) a court should not reach the underlying merits of the controversy when determining arbitrability; and 4) as a matter of policy, courts favor arbitration of disputes.

Mendez v. Palm Harbor Homes, Inc., 111 Wn. App. 446, 455-56, 45 P.3d 594 (2002) (quoting Stein, 105 Wn. App. at 45-46). The Washington Arbitration Act[8] and the Federal Arbitration Act (FAA)[9] generally mandate arbitration if parties have 'written agreements' to arbitrate. The question here is whether the parties have such written agreements to arbitrate.

B. Continued Validity of Former Contracts' Arbitration Clause

On a motion to compel arbitration, a court 'shall make an order directing the parties to proceed to

arbitrate' if 'no substantial issue exists as to the existence or validity of the agreement to arbitrate or the failure to comply therewith.' RCW 7.04.040(1). But if the court finds a Ssubstantial issue' as to arbitrability, then 'the court shall proceed immediately to the trial of such issue.' RCW 7.04.040(2).[10] Here, the conflicting language between the former and the new contracts creates a substantial issue of arbitrability. This issue requires resolution by trial.

Premera's former contract with the Franciscan Group's predecessor provided that the mandatory arbitration provision 'shall survive termination of this Agreement.' Premera's former contract with the six individual doctors did not contain similar language about the future enforceability of mandatory arbitration provisions. The new contracts, however, provided that they 'supersede{} all prior agreements between the parties.'

Providers interpret the new contracts' 'supersedes' clause as nullifying the former contracts' arbitration clauses. They persuaded the trial court that the new contracts superseded the mandatory arbitration clauses in the former contracts, even as to claims that arose during time periods covered under the former contracts.

Premera counters that the former contracts' arbitration provisions were 'superseded' only as to claims arising after execution of the current contracts. Premera also notes that many of Providers' underpayment claims arose during the period covered by the former contracts, even though Providers waited until after the effective date of the new contracts to seek recovery on those claims.

Both the 'shall survive termination of this Agreement' language of the former contracts and the 'supercedes' language of the new contracts involve contract interpretation. The goal of contract interpretation is to determine the intent of the parties. Tanner Elec. Coop. v. Puget Sound Power & Light, 128 Wn.2d 656, 674, 911 P.2d 1301 (1996).[11] 'Interpretation of a contract provision is a question of law only when (1) the interpretation does not depend on the use of extrinsic evidence, or (2) only one reasonable inference can be drawn from the extrinsic evidence.' Tanner, 128 Wn.2d at 674.

Here, there are at least two possible ways that the 'supersedes' clause could operate. First, the parties may have intended the old and new contracts to cover claims arising during their respective time periods.[12] If so, then, as Premera argues, the 'supersedes' clause in the new contracts could operate as a standard integration clause affecting claims arising under only the new agreement.[13] Generally, the presence of an integration clause in a subsequent contract does not serve to cancel a party's rights under prior contracts. Coffman v. Provost 7 Umphrey Law Firm, 161 F. Supp.2d 720, 729 (2001), affirmed, 33 Fed. Appx. 705 (Table), 2002 WL 433003 (5th Cir. 2002), cert. denied, 537 U.S. 880 (2002). Rather, a standard integration clause triggers the parol evidence rule and 'prevent{s} prior unincorporated agreements from being enforceable in the final contract.' Id. (citing Sec. Watch, Inc. v. Sentinel Sys., Inc., 176 F.3d 369, 372-73 (6th Cir. 1999)).

The U.S. Supreme Court has noted that 'in the absence of some contrary indication, there are strong

reasons to conclude that the parties did not intend their arbitration duties to terminate automatically with the contract.' Nolde Bros., Inc. v. Local No. 358, Bakery & Confectionery Workers Union, 430 U.S. 243, 253, 97 S. Ct. 1067, 51 L. Ed. 2d 300 (1977). This policy is bolstered here by the express language in the former contracts stating that the dispute resolution provisions 'survive termination of the contract.'

On the other hand, it is also possible that, as Providers argue, the 'supersedes' clause could operate as a novation.

To work a novation, it must appear from what was done that the parties intended the new contract to cancel and supersede the original contract, and equity will not assume such an intention unless the intent clearly appears or substantial justice requires it.

Mut. Reserve Ass'n v. Zeran, 152 Wash. 342, 349, 277 P. 984 (1929) (emphasis added).[14]

Because Providers challenge the 'validity of the arbitration agreement,' asserted in Premera's motion to compel, Providers bear the burden of setting forth clear evidence of the parties' intent to replace the prior contracts' mandatory arbitration provisions. RCW 7.04.040(4). But without an evidentiary hearing or trial, Providers have not yet been called upon to meet this burden.[15]

Neither we nor the trial court can presume either interpretation. Nor can we discern from the record before us what were the parties' intents in signing successive contracts with clearly conflicting provisions. Accordingly, we hold that the trial court erred in concluding that the 'supercedes' language of the new contracts nullified the mandatory arbitration provision of the former contracts, as to claims arising during the time period of the former contracts.

We remand to the trial court to conduct a hearing or trial to determine the arbitrability of those claims. If, on remand, the trial court determines that the parties intended the new contracts' 'supercedes' language to be a standard integration clause, then the former contracts control those claims arising within the former contracts' effective dates, and they are subject to mandatory arbitration.[16] See Coffman, 161 F. Supp. 2d at 728. If, on the other hand, the trial court determines that the parties intended the new contracts' 'supercedes' language to operate as a novation, extinguishing the former contracts' arbitration provisions, then the new contracts control and there is no mandatory arbitration of the claims at issue.

II. Arbitration Clauses Not Voidable

Providers argue that their former agreements for binding arbitration are voidable because they are contrary to statute or regulation, unconscionable, and contrary to public policy. We address each argument in turn.

A. Not Contrary to Statute or Regulatory Code

A contract that is contrary to statutory law is generally unenforceable. See, e.g., Smith v. Skone & Connors Produce, Inc., 107 Wn. App. 199, 26 P.3d 981 (2001), review denied, 145 Wn.2d 1028 (2002). Providers argue that the former contracts' arbitration clauses are contrary to: (1) RCW 48.43.055, which they contend allows only non-binding mediation; and (2) WAC 284-43-322, which proscribes 'alternative dispute resolution to the exclusion of judicial remedies.'

Premera argues that (1) these arbitration clauses are not prohibited by RCW 48.43.055 (which merely permits mediation), or WAC 284-43-322; (2) limited appeals are available under RCW 7.04.150-.170; (3) WAC 284-43-322 is not retroactive; and, (4) alternatively, the FAA preempts conflicting state law.

1. RCW 48.43.055 does not prohibit arbitration.

RCW 48.43.055 provides:

Each health carrier . . . shall file with the commissioner its procedures for review and adjudication of complaints initiated by health care providers. Procedures filed under this section shall provide a fair review for consideration of complaints. Every health carrier shall provide reasonable means allowing any health care provider aggrieved by actions of the health carrier to be heard after submitting a written request for review. If the health carrier fails to grant or reject a request within thirty days after it is made, the complaining health care provider may proceed as if the complaint had been rejected. A complaint that has been rejected by the health carrier may be submitted to non-binding mediation. Mediation shall be conducted under mediation rules similar to those of the American arbitration association, the center for public resources, the judicial arbitration and mediation service, RCW 7.70.100, or any other rules of mediation agreed to by the parties.

RCW 48.43.055 (emphasis added).

The plain language of this statute (1) requires health carriers to provide a fair and reasonable review procedure for complaining providers, approved by the commissioner; and (2) allows mediation, which must follow a set of agreed upon rules. Plainly, this statute does not prohibit arbitration.

2. WAC 284-43-322 is not retroactive.

WAC 284-43-322 became effective on November 11, 1999. Premera entered into new Provider contracts, with no binding arbitration clauses, in 2001. WAC 284-43-322 provides that a procedure for dispute-resolution between a health carrier and provider 'may not require alternative dispute resolution to the exclusion of judicial remedies; however, carriers may require alternative dispute resolution prior to judicial remedies.' WAC 284-43-322(4) (emphasis added).

Premera argues that WAC 284-43-322 is presumed prospective in application because it is not explicitly retroactive. Providers argue that WAC 284-43-322 is retroactive because it is clearly remedial and does not affect a substantial vested right. We agree with Premera.

Newly enacted statutes or newly adopted rules ordinarily operate prospectively. However, when a statute or rule not explicitly made retroactive is remedial in nature, it can operate retroactively. An act is remedial when it relates to practice, procedure, or remedies and does not affect a substantive or vested right.

Dep't of Labor and Indus. v. Moser, 35 Wn. App. 204, 206, 665 P.2d 926 (1983) (citations omitted). We do not find here that this latter condition for 'remedial' acts has been established.

Even were we to assume that this new regulation relates to 'practice, procedure, or remedies,'[17] interpreting this regulation as retroactive would affect a 'substantive or vested right.' Moser, 35 Wn. App. at 206. Our Supreme Court has instructed that retroactivity is particularly inappropriate 'where vested rights or contractual obligations are affected.' State v. T.K., 139 Wn.2d 320, 327, 987 P.2d 63 (1999) (emphasis added). '{R}etroactivity will be granted only if it does not violate constitutional protections relating to due process and the impairment of contracts.' In re F.D. Processing, Inc., 119 Wn.2d 452, 460, 832 P.2d 1303 (1992) (holding, at 461-62, that a definitional amendment is not retroactive when it affected a bank's vested right in a perfected security interest). Premera has an otherwise valid contract right requiring Providers to arbitrate.

Accordingly we hold that the former contracts' arbitration clauses are not contrary to RCW 48.43.055 or WAC 284-43-322.

B. Unconscionability

Providers next contend that the former contracts' mandatory arbitration clauses are unconscionable because (1) the costs of arbitration are prohibitive; (2) they are parts of impermissible contracts of adhesion; and (3) they prevent litigation of class action claims. Noting its stipulation that individual Providers may aggregate their claims in a single arbitration, Premera argues that Providers are sophisticated commercial entities who entered into clearly-worded contracts with no fine print or other unusual attributes.

Contracts can be substantively or procedurally unconscionable. Mendez, 111 Wn. App. at 459. Substantive unconscionability occurs when contract terms are 'one-sided or overly harsh' such that they appear ''{s}hocking to the conscience,' 'monstrously harsh,' and 'exceedingly calloused.'' Mendez, 111 Wn. App. at 459 (quoting Nelson v. McGoldrick, 127 Wn.2d 124, 131, 896 P.2d 1258 (1995)). Procedural unconscionability occurs when an 'irregularity' taints contract formation resulting in 'the lack of a meaningful choice' in the circumstances, including ''{t}he manner in which the contract was entered,' whether each party had 'a reasonable opportunity to understand the terms of

the contract,' and whether 'the important terms {were} hidden in a maze of fine print.'' Mendez, 111 Wn. App. at 459 (quoting Nelson, 127 Wn.2d at 131). We find neither of these types of unconscionability here.

1. No showing that arbitration costs are prohibitive.

Citing Mendez, 111 Wn. App. at 461 and 465, Providers assert that mandatory arbitration requires a prohibitive cost to pursue myriad, small claims. But Providers have not demonstrated 'desperate pecuniary status' or proven the 'costs associated with' arbitrating their claims. Mendez, 111 Wn. App. at 465.[18] They have merely alleged that it is not 'cost effective' to arbitrate individual claims because (1) disputed bills are usually under $150, with many below $100; (2) appealing individual claims would be 'impractical and ineffective'; and (3) the 'amounts in dispute . . . {are} often too small to make arbitration a viable option'.

Nor does Providers' brief mention the costs of arbitration. Instead, it generally ignores Premera's stipulation that each Provider can aggregate his individual claims in one arbitration proceeding.

2. Not contracts of adhesion.

In determining whether a contract is one of adhesion, we consider '(1) whether the contract is a standard form printed contract, (2) whether it was 'prepared by one party and submitted to the other on a 'take it or leave it' basis,' and (3) whether there was 'no true equality of bargaining power' between the parties.' Eelbode v. Chec Med. Ctr., Inc., 97 Wn. App. 462, 472 n.6, 984 P.2d 436 (1999) (quoting Yakima County (W.Valley) Fire Prot. Dist. No. 12 v. City of Yakima, 122 Wn.2d 371, 393, 858 P.2d 245 (1993).

Here, Providers submitted declarations that Premera prepared these contracts as standard forms and would not accept alterations. But Premera asserts that medical care providers have a 'variety of options' and regularly negotiate heir individual contracts. Providers also have the option to contract with other health carriers in this competitive market. Premera points out that the Franciscan Group and Tacoma Orthopaedic Surgeons 'are both large health care providers,' who earn multi-million dollar reimbursements from Premera and are capable of individually negotiating contract terms.

Even if these were contracts of adhesion, they are not necessarily unconscionable. Mendez, 111 Wn. App. at 459. Premera did not bury any terms in fine print, and Providers appear to have had a 'reasonable opportunity to understand the terms of the contract{s}' before entering into them. Mendez, 111 Wn. App. at 459 (quoting Nelson, 127 Wn.2d at 131). For example, the Administrator for Tacoma Orthopaedic Surgeons, Suzanne Foss, declared that she 'would occasionally discuss what a term of the contract {might} mean' with Premera. This type of action suggests that the contracts are not unconscionable.

3. Availability of class action procedures for arbitrator to decide.

Providers cite Stein in arguing that an arbitration clause preventing a class action claim may be unconscionable if in 'conflict with statutory provisions, contract law, or due process requirements.' 105 Wn. App. at 49. They contend that the arbitration agreements foreclose their ability to proceed as a class and, therefore, conflict with RCW 48.43.055, WAC 284-43-322(4), and case law from various other jurisdictions. But the contract language does not specifically prohibit class arbitration. Although it states that Providers are prohibited from seeking a judicial remedy, the contract is silent on the issue of class consolidation.

Premera argues that class action issues are irrelevant to a trial court's decision regarding the enforceability of an arbitration agreement. Two recent cases persuasively support this argument.

In Stein, the court rejected the plaintiff's argument that a contractual clause requiring mandatory arbitration for unresolved disputes unconscionably prohibited class litigation. Stein, 105 Wn. App. at 49. The court reasoned that '{b}ecause the arbitration clause here is silent on class action and Stein has failed to demonstrate a conflict with statutory provisions, contract law, or due process requirements, we enforce the clause as written.' Stein, 105 Wn. App. at 49. The court also noted, 'Many courts have enforced arbitration agreements even when the agreements are silent on class action.' Stein, 105 Wn. App. at 49.

The United States Supreme Court has held that whether an agreement to arbitrate allowed class arbitration is itself a dispute subject to arbitration. Green Tree Fin. Corp. v. Bazzle, U.S. , , 123 S. Ct. 2402, 2407, 156 L. Ed. 2d 414 (2003). The Court reasoned that disputes about 'what kind of arbitration proceeding the parties agreed to' is not one of the 'gateway matters' that 'contracting parties would likely have expected a court' to decide (as contrasted with whether the parties have a valid arbitration agreement at all or whether a concededly binding arbitration clause applies to a certain type of controversy). Green Tree, 123 S. Ct. at 2407 (citing Howsam v. Dean Witter Reynolds, Inc., 537 U.S. 79, 83, 123 S. Ct. 588, 154 L. Ed. 2d 491 (2002)). Rather, the controversy only 'concern{ed} contract interpretation and arbitration procedures,' issues for which an arbitrator is 'well situated.' Green Tree, 123 S. Ct. at 2407.

Applying these principles here, we note that Providers' former contracts with Premera essentially require binding arbitration '{t}o resolve any differences regarding payment.' This broad language is 'silent' on the issue of class arbitration. Stein, 105 Wn. App. at 49. Whether class arbitration is available generally raises issues of 'contract interpretation and arbitration procedures' for the arbitrator, not for the court, in determining arbitrability. Green Tree, 123 S. Ct. at 2407.

Thus, if the trial court on remand determines that the parties intended the former contracts' arbitration provision to continue in force for those claims arising during that period, it will be for the arbitrator to resolve the class arbitration issue.[19]

C. Public Policy

Last, Providers argue that the arbitration clauses are unenforceable because (1) they violate public policy, and (2) Premera has acted in bad faith and with unclean hands in systematically denying Providers' legitimate claims. These claims lack merit.[20]

III. Stay Pending Remand and Arbitration

Premera asks us to stay Providers' entire class action pending resolution of some of the claims arbitrability. The Washington Arbitration Act provides:

If any action for legal or equitable relief or other proceedings be brought by any party to a written agreement to arbitrate, the court in which such action or proceeding is pending, upon being satisfied that any issue involved in such action or proceeding is referable to arbitration under such agreement, shall, on motion of any party to the arbitration agreement, stay the action or proceeding until an arbitration has been had in accordance with the agreement.

RCW 7.04.030 (emphasis added).

This statute requires stay of only those actions 'brought by any party to a written agreement to arbitrate.' RCW 7.04.030. Under its plain language, this statute applies only to claims brought by those Providers who were parties to the former Premera contracts containing mandatory arbitration clauses. It does not, therefore, require a stay of the actions brought by other Providers who were not parties to contracts with such clauses. Accordingly, we grant Premera's motion to stay the proceedings only as to those Providers who were parties to the former contracts with arbitration clauses and only as to those claims that arose during the effective dates of those former contracts.

We affirm, in part, the trial court's denial of Premera's motion to compel arbitration as to claims of Providers not parties to the former contracts with arbitration clauses and as to claims arising under contracts lacking mandatory arbitration clauses. As to claims of Providers who were parties to the former contracts containing mandatory arbitration clauses, we reverse, in part, and remand for a hearing or trial to determine whether the parties intended the new contracts' dispute-resolution provisions to replace the mandatory arbitration requirements for claims that arose during the effective dates of the former contracts.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

1. For example, on August 10, 2001, Dr. Craig Tuohy performed two separate surgical procedures upon a patient: the removal of a polyp from one area of the patient's colon and a biopsy of a separate area. Dr. Tuohy billed Premera for two procedures, under two separate CPT billing codes. Such separate billing was authorized by the American Medical

Association's 'CPT Assistant' guidelines. Premera bundled the two procedures into one and paid Dr. Tuohy only for the polyp removal. No payment was made for the biopsy. Premera thus paid $452.00 less than it would have had no bundling taken place.

2. See e.g., Clerk's Papers (CP) at 132 (under $100-150).

3. On April 1, 1999, the Franciscan Group succeeded to the interests of Medalia Healthcare, L.L.C.

4. WAC 284-43-322 implemented RCW 48.43.055, which was enacted by the Legislature in 1995 to establish procedures for review and adjudication of health care provider complaints. RCW 48.43.055 provides in relevant part: Procedures filed under this section shall provide a fair review for consideration of complaints. Every health carrier shall provide reasonable means allowing any health care provider aggrieved by actions of the health carrier to be heard after submitting a written request for review. If the health carrier fails to grant or reject a request within thirty days after it is made, the complaining health care provider may proceed as if the complaint had been rejected. A complaint that has been rejected by the health carrier may be submitted to non-binding mediation. RCW 48.43.055 (emphasis added).

5. WAC 284-43-321.

6. Chapter 9A.82 RCW.

7. Chapter 19.86 RCW.

8. Chapter 7.04 RCW. RCW 7.04.040(1) provides: A party to a written agreement for arbitration claiming the neglect or refusal of another to proceed with an arbitration thereunder may make application to the court for an order directing the parties to proceed with the arbitration in accordance with their agreement. . . . If the court is satisfied after hearing the parties that no substantial issue exists as to the existence or validity of the agreement to arbitrate or the failure to comply therewith, the court shall make an order directing the parties to proceed to arbitrate in accordance with the terms of the agreement.

9. 9 U.S.C. sec.sec. 1-16. We rely primarily on the Washington Arbitration Act, which controls here.

10. See also Cantwell v. Safeco Ins. Co., 37 Wn. App. 133, 135, 678 P.2d 852 (1984) ('If the court finds that a substantial issue is raised as to the right to have an arbitration hearing, there shall be an immediate trial of that issue. The trial court is not authorized to settle the issue upon a motion without a trial. Whether the court shall compel arbitration depends on the outcome of the trial.'); Herzog v. Foster & Marshall, Inc., 56 Wn. App. 437, 441-42, 783 P.2d 1124 (1989) (requiring a 'mini-trial' if necessary).

11. When the meaning of written words is unclear, courts may look to objective manifestations of the parties' intent, including the 'contract as a whole, the subject matter and objective of the contract, all the circumstances surrounding the making of the contract, the subsequent acts and conduct of the parties to the contract, and the reasonableness of respective interpretations advocated by the parties.' Berg v. Hudesman, 115 Wn. 2d 657, 667, 801 P.2d 222 (1990) (quoting

Stender v. Twin City Foods, Inc., 82 Wn.2d 250, 254, 510 P.2d 221 (1973)).

12. See, e.g., W.T. Rawleigh Co. v. Graham, 4 Wn.2d 407, 414, 103 P.2d 1076 (1940) (rejecting argument that the last of an annual series of standard merchandising contracts had 'superseded all prior contracts' because the last 'two contracts are nowise inconsistent; they simply cover different periods of time').

13. See, e.g., Browning v. Howerton, 92 Wn. App. 644, 650, 966 P.2d 367 (1998) (like here, an 'integration clause' in the contract stated, 'This contract contains the entire agreement of the parties hereto and . . . supersedes all of their previous understandings and agreements').

14. See also Higgins v. Stafford, 123 Wn.2d 160, 165-66, 866 P.2d 31 (1994) (quoting Bader v. Moore Bldg. Co., 94 Wash. 221, 224, 162 P. 8 (1917) ('Generally, when two contracts are in conflict, the legal effect of a subsequent contract made by the same parties and covering the same subject matter, but containing inconsistent terms, 'is to rescind the earlier contract. It becomes a substitute therefor, and is the only agreement between the parties upon the subject.'')

15. The trial court did not hold an evidentiary hearing to determine the parties' intents.

16. Howell Crude Oil Co. v. Tana Oil & Gas Corp., 860 S.W.2d 634, 638 (Tex. App. 1993).

17. This assumption may be unwarranted. Plainly, RCW 48.43.055 does not proscribe alternative dispute resolution that is 'binding' (i.e., excludes judicial remedies), so this regulation may be understood to affect a substantial change in the law.

18. Premera correctly distinguishes Mendez as a consumer contract case, inapplicable to commercial transactions between professional entities. See In re Managed Care Litigation, 132 F. Supp. 2d 989, 998 (S.D. Fl. 2000) (reasoning in health carrier/provider contract that 'the doctors are sophisticated individuals, not consumers alleging TILA violations in connection with the purchase of a mobile home or employees suing under Title VII'), aff'd sub nom In re Humana Inc. Managed Care Litigation, 285 F.3d 971 (11th Cir. 2002), reversed and remanded on other grounds, 123 S. Ct. 1531 (2003).

19. See also n.11, supra.

20. Providers do not articulate a specific public policy that has been violated. Moreover, their equitable arguments on the question of arbitrability would require us to consider 'the underlying merits of the controversy' whether Premera has systematically denied legitimate claims which are issues for the trial court. Mendez, 111 Wn. App. at 455-56 (quoting Stein, 105 Wn. App. at 45-46).